

ORIGINAL

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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

\* \* \* \* \*

JULIE A. MILITELLO,

CV-S-00-1316-DWH-RJJ

Plaintiff,

vs.

LAS VEGAS METROPOLITAN POLICE )  
DEPARTMENT, a Political Sub- )  
division of the STATE OF NEVADA; )  
Police Officers, J. LOMBARDO, )  
F. HERNANDEZ, MCGRATH, VIALARD, )  
each individually and as a police )  
officer employed by the LAS )  
VEGAS METROPOLITAN POLICE )  
DEPARTMENT; DOE POLICE OFFICERS )  
I through X; JOHN DOES I through X, )  
inclusive, )

**COMPLAINT**  
**(Jury Demanded)**

Defendants.

COMES NOW, the Plaintiff, JULIE A. MILITELLO, by and through her attorney  
CAL J. POTTER, III, ESQ. of the law firm of POTTER LAW OFFICES, and hereby  
complains of the Defendants, and each of them, jointly and severally, upon information

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1 and belief, and respectfully alleges:

2  
3 **INTRODUCTION**

4 This is a complaint for money damages against said Defendant Officers, police  
5 officers of the Las Vegas Metropolitan Police Department, for violation of JULIE A.  
6 MILITELLO's constitutional and common law rights. Plaintiff alleges that said  
7 Defendant Officers used excessive force when unlawfully entering and searching her home  
8 and committed a battery in the course of such acts and that Defendant, Las Vegas  
9 Metropolitan Police Department is liable for its custom and practice of permitting and  
10 encouraging excessive force on individuals who do not readily obey their commands and  
11 that the use of excessive force in committing such acts, with the result that officers of the  
12 Las Vegas Metropolitan Police Department were encouraged that they could violate  
13 Plaintiff's constitutional rights.  
14

15  
16 **JURISDICTION**

17 Jurisdiction of this court is invoked under 28 U.S.C. §§1343 (1), (2), (3), (4).

18 1. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, and the Fourth,  
19 Fifth, and Fourteenth Amendments to the Constitution of the United States.

20 2. This action is brought to seek redress against the Defendant Officers for acts  
21 committed while acting under color of laws of the State of Nevada, or laws, policies,  
22 ordinances, statements, regulations or mandates, written of the Defendant, Las Vegas  
23 Metropolitan Police Department, a political subdivision of the State of Nevada, pursuant  
24 to Nevada Revised Statute.  
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**PARTIES**

3. Plaintiff, JULIE A. MILITELLO, is and was at all times relevant to this complaint, a citizen of the United States of America, a resident of the State of Nevada.

4. Defendant, LAS VEGAS METROPOLITAN POLICE DEPARTMENT, (LVMPD) is a political entity pursuant to the Nevada Revised Statute and at all times relevant hereto, employed the Defendant Officers. Defendant LVMPD is a "person" under Monell v. Dept. of Social Services, 436 U.S. 658, 691 (1978).

5. Defendant Officers J. LOMBARDO, F. HERNANDEZ, MCGRATH, VIALARD are police officers. They are sued individually and in their official capacity. They are sued for punitive damages in their individual capacity.

6. At all times relevant hereto, and in all their actions described herein, Defendant Officers were acting under the color of law in their authority as police officers at the Las Vegas Metropolitan Police Department.

7. That the true names and capacities, whether municipal, individual, corporate, associate or otherwise of the Defendants herein designated as DOE OFFICERS I through X, inclusive, and JOHN DOES I through X, inclusive, are unknown to Plaintiff who, therefore, sues said Defendants by such fictitious names. Plaintiff alleges that each named Defendant herein designated as DOES is negligently, wilfully, contractually or otherwise legally responsible for the events and happenings herein referred to and proximately caused injury and damages thereby to Plaintiff, as herein alleged. Plaintiff will ask leave of the Court to amend this Complaint to insert the true names and capacities of such Defendants when same have been ascertained and will further ask leave to join

1 said Defendants in these proceedings.

2  
3 8. Defendants, and each of them, did the acts and omissions hereinafter alleged in  
4 bad faith and with knowledge that their conduct violated well established and settled law.

5 **FIRST CAUSE OF ACTION**

6 **FALSE IMPRISONMENT**

7 9. Paragraphs 1 through 8 are incorporated herein by reference.

8  
9 10. On or about September 2, 1999, Plaintiff was residing peacefully at home,  
10 talking on the telephone, when violent knocking ensued upon her front door. Plaintiff was  
11 unclothed, so she retrieved a robe prior to answering the door.

12 11. While holding her robe closed, Plaintiff cracked open the door when two  
13 men, Defendant Officers J. LOMBARDO and F. HERNANDEZ, wearing jeans and t-shirts  
14 forcibly pushed open the door and unlawfully entered Plaintiffs home, without a warrant,  
15 pointing guns at her. Plaintiff demanded the then unidentified men leave her home  
16 immediately.  
17

18 12. Plaintiff asked her friend on the telephone to call 911, as she believed the  
19 two men were burglarizing her home and that her life was in danger. Defendant Officer J.  
20 LOMBARDO punched the telephone away from Plaintiff, and violently attacked, battered,  
21 tackled and handcuffed Plaintiff, while Defendant Officer F. HERNANDEZ held her at  
22 gun point.  
23

24 13. After the restrained Plaintiff requested to see a search warrant, Defendant  
25 Officer J. LOMBARDO began violently choking Plaintiffs neck.

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1           14. Under threat of further bodily harm and arrest, Defendant Officers then  
2 ordered Plaintiff to sign a consent to search form.

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4           15. Two additional plain-clothes officers, Defendants MCGRATH and  
5 VIALARD, then unlawfully entered Plaintiffs home and assisted the other Defendant  
6 Officers with unlawfully searching and ransacking Plaintiffs home.

7  
8           16. Plaintiff had committed no illegal acts at the time she was wrongfully and  
9 falsely imprisoned, but the Defendants, and each of them, by and through their employees,  
10 agents, and servants, participated together to cause the false imprisonment of and to  
11 violently restrain the Plaintiff for no just reason and in the absence of due diligence; that  
12 said imprisonment and search was unlawful, without warrants, judicial orders, or other  
13 rightful authority of law in violation of the Fourth, Fifth, and Fourteenth Amendments to  
14 the Constitution, and 42 U.S.C. 1983.

15  
16           17. Plaintiff was imprisoned against her will and without consent in violation  
17 of her constitutional rights.

18           18. As a result of the acts detailed, supra, Plaintiff has suffered serious physical  
19 injury, loss of community reputation, loss of daily and future income, and to incur severe  
20 financial obligations in order to retain attorneys to seek redress against the unlawful  
21 conduct of the Defendants, as well as other painful injuries, deprivation of her liberty,  
22 invasion of her privacy, grievous mental suffering, and pain and suffering, all in violation  
23 of 42 U.S.C. 1983 and the Fourth, Fifth, and Fourteenth Amendments to the United States  
24 Constitution, all to her damage in an amount in excess of SEVENTY-FIVE THOUSAND  
25 DOLLARS (\$75,000.00).  
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19. The acts, conduct and behavior of each of the Defendant Officers as individuals was performed knowingly, intentionally, oppressively, and maliciously, by reason of which Plaintiff is entitled to punitive damages in a sum in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00).

**SECOND CAUSE OF ACTION**

**EXCESSIVE FORCE**

20. Paragraphs 1 through 19 are incorporated herein by reference.

21. Said use of excessive force deprived Plaintiff of the constitutional right to bodily security and liberty under the Fourteenth Amendment to the United States Constitution, and was an unreasonable physical seizure of Plaintiff under the Fourth Amendment to the United States Constitution.

22. As a result of the unwarranted use of excessive force, Plaintiff was bruised and battered. In addition, Plaintiff has suffered serious physical injury, loss of community reputation, loss of daily and future income, and to incur severe financial obligations in order to retain attorneys to seek redress against the unlawful conduct of the Defendants, as well as other painful injuries, deprivation of her liberty, invasion of her privacy, grievous mental suffering, and pain and suffering, all in violation of 42 U.S.C. 1983 and the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, all to her damage in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00).

23. The act, conduct and behavior of Defendant Officers, individually, were performed knowingly and intentionally, oppressively and maliciously, by reason of which

1 Plaintiff is entitled to punitive damages in a sum in excess of SEVENTY-FIVE  
2 THOUSAND DOLLARS (\$75,000.00).

3  
4 **THIRD CAUSE OF ACTION**

5 **INTENTIONAL INFLICTION OF SEVERE MENTAL DISTRESS**

6 24. Paragraphs 1 through 23 inclusive are incorporated by reference.

7 25. The Defendants' conduct, above described, was in an intentional manner  
8 and inflicted emotional distress, in that it caused Plaintiff to suffer great shame,  
9 humiliation, embarrassment, and severe mental and emotional anguish. As a result of these  
10 acts, Plaintiff has suffered loss of community reputation, loss of daily and future income,  
11 and to incur severe financial obligations in order to retain attorneys to seek redress against  
12 the unlawful conduct of the Defendants, as well as other painful injuries, deprivation of  
13 her liberty, invasion of her privacy, grievous mental suffering, and pain and suffering, all  
14 in violation of 42 U.S.C. 1983 and the Fourth, Fifth, and Fourteenth Amendments to the  
15 United States Constitution, all to her damage in an amount in excess of SEVENTY-FIVE  
16 THOUSAND DOLLARS (\$75,000.00).

17 26. The act, conduct and behavior of Defendant Officers, individually, were  
18 performed knowingly and intentionally, oppressively and maliciously, by reason of which  
19 Plaintiff is entitled to punitive damages in a sum in excess of SEVENTY-FIVE  
20 THOUSAND DOLLARS (\$75,000.00).

21  
22 **FOURTH CAUSE OF ACTION**

23 **UNLAWFUL SEARCH AND SEIZURE**

24 27. Paragraphs 1 through 26 inclusive are incorporated by reference.

1           28.     The search and seizure described above was unreasonable and in violation  
 2 of the Fourth Amendment of the United States Constitution. As a result of these acts,  
 3 Plaintiff has suffered physical injuries, loss of community reputation, loss of daily and  
 4 future income, and to incur severe financial obligations in order to retain attorneys to seek  
 5 redress against the unlawful conduct of the Defendants, as well as other painful injuries,  
 6 deprivation of her liberty, invasion of her privacy, grievous mental suffering, and pain and  
 7 suffering, all in violation of 42 U.S.C. 1983 and the Fourth, Fifth, and Fourteenth  
 8 Amendments to the United States Constitution, all to her damage in an amount in excess  
 9 of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00).  
 10

11           29.     The act, conduct and behavior of Defendant Officers, individually, were  
 12 performed knowingly and intentionally, oppressively and maliciously, by reason of which  
 13 Plaintiff is entitled to punitive damages in a sum in excess of SEVENTY-FIVE  
 14 THOUSAND DOLLARS (\$75,000.00).  
 15

16                               **FIFTH CAUSE OF ACTION**

17                               **CUSTOM, POLICY AND PRACTICE**

18                               **CIVIL RIGHTS VIOLATION**

19           30.     Paragraphs 1 through 29 inclusive are incorporated by reference.  
 20

21           31.     The Las Vegas Metropolitan Police Department has grossly failed to train  
 22 its police officers in the fundamental law of search, arrest, detention, and use of force.  
 23

24           32.     The actions of the Defendant Officers resulted from, and were taken  
 25 pursuant to a de facto policy of the Las Vegas Metropolitan Police Department, which is  
 26 implemented by police officers of the said Department to summarily punish persons who  
 27  
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1 refuse to obey police orders, whether lawful or not, by means of unlawful detention, arrest,  
2 search, battery, and excessive force.  
3

4 33. The existence of the de facto policy described in paragraph 32 has been  
5 known to supervisory and policy-making officers and officials of the Police Department,  
6 and the said department for a substantial period of time.  
7

8 34. Despite their knowledge of the said illegal policy and practices, the  
9 supervisory and policy-making officers and officials of the said Defendant Police  
10 Department as a matter of policy, have not taken steps to terminate the said practices, or  
11 investigate, have not disciplined or otherwise properly supervised the individual officers  
12 who engaged in the said practices, have not effectively trained police officers with regard  
13 to the proper constitutional and statutory limits on the exercise of their authority, and have,  
14 instead, sanctioned the policy and practices described in Paragraph 32 through their  
15 deliberate indifference to the effect of the said policy and practices upon the constitutional  
16 rights of the residents and visitors of the City of Las Vegas and the County of Clark.  
17

18 35. The foregoing acts, omissions, and systematic failures are customs and  
19 policies of the Defendant, Las Vegas Metropolitan Police Department, caused the  
20 Defendant Officers to believe that determination of the right to detain, search, arrest and  
21 use of force, and the amount of allowable legal force, was within their discretion and that  
22 complaints of illegal detainment, arrest, and use of excessive force would not be honestly  
23 or properly investigated, with the foreseeable result that officers would be likely to  
24 illegally imprison, search, arrest, and to use improper force.  
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1 amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00).

2  
3 42. That the acts, conduct, and behavior of the Defendant Officers as  
4 individuals, was performed knowingly, intentionally, oppressively, and maliciously, by  
5 reason of which Plaintiff is entitled to punitive damages in a sum in excess of SEVENTY-  
6 FIVE THOUSAND DOLLARS (\$75,000.00).

7  
8 **WHEREFORE**, Plaintiff JULIE A. MILITELLO demands judgment in her favor  
9 against the Defendants, and each of them: (a) for compensatory damages in an amount in  
10 excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00); (b) for general  
11 damages in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS  
12 (\$75,000.00); (c) against Defendant Officers as individuals for punitive damages each in  
13 an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00); and (d)  
14 together with the costs and disbursements of this action and such other attorney's fees  
15 pursuant to 42 U.S.C. § 1988, and further relief as justice requires.

16  
17 DATED this 31 day of October, 2000.

18  
19 POTTER LAW OFFICES

20  
21 By   
22 CAL J. POTTER, III, ESQ.  
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